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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
02-3-2002
CLERK, U.S. DISTRICT COURT
By [Signature] Deputy

P.O'B. APOLLO TACOMA, L.P.,

Plaintiff,

v.

THE TJX COMPANIES, INC.,

Defendant.

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Civil No. 3:02-CV-0222-H

02-3322



MEMORANDUM OPINION AND ORDER

Before the Court is the Bankruptcy Court's Report and Recommendation to District Court in Response to Reference from District Court, filed September 9, 2002, Defendant's Objections, filed September 26, 2002, Plaintiff's Response, filed September 26, 2002, and Plaintiff's Request for Judicial Notice, filed September 26, 2002. The Court has made the required independent review of the pleadings, the files and records of this case, the Bankruptcy Court Report and Recommendation, Defendant's Objections, and Plaintiff's Response and Request for Judicial Notice. Having done so, the Court is of the opinion that the Bankruptcy Court Report and Recommendation are correct and they are **ADOPTED** as the judgment of this Court. A brief discussion of permissive abstention and equitable remand is instructive on the Court's decision.

I. Permissive Abstention and Equitable Remand:

Defendant TJX Companies, Inc. objects to the Bankruptcy Court Report and Recommendation on the ground that it "did not consider all of the factors relevant to permissive abstention...or equitable remand." (Def.'s Objections at 11). Because the doctrines of discretionary abstention and equitable remand are very similar, there is an overlap between the two regarding factors for the court to consider. They include:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;

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- (4) presence of related proceeding commenced in state court or other non-bankruptcy proceeding;
- (5) jurisdictional basis, if any, other than § 1334(c);
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of the...court's docket;
- (10) the likelihood that the commencement of the proceeding in the [district] court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of non-debtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

See, e.g., Broyles v. U.S. Gypsum, Co., 266 B.R. 778, 785 (E.D. Tex. 2001). The Court will discuss the most relevant factors.

To begin with, the Court finds that abstention and remand in this case will have very little or no adverse effect on the efficient administration of the estate of the debtor. While Defendant alleges a right to indemnification from the bankrupt, there is nothing in the pleadings before the Court to suggest that it has filed a proof of claim or taken any other action in the bankruptcy proceeding to protect that right to indemnification. The bankruptcy estate can only be better served by the rapid determination of the amount of Defendant's claim against the estate.

Furthermore, as discussed in the Bankruptcy Court's Recommendation, the claims in this suit are exclusively of a state-law¹ nature and are only in this Court because of § 1334 jurisdiction. The only relationship that this case has to the bankruptcy proceeding is that the debtor defaulted on payments, creating liability in the Defendant guarantor. If this case were required to be adjudicated

¹In its Objections, Defendant alleges that there is a choice of law provision in the underlying contract that requires Washington law be applied in any conflict. (Def.'s Objections at 13). The existence of such a choice of law provision does not require adjudication in this forum.

in federal court on that ground, then every guaranty agreement would require litigation in federal court.² Neither of the parties to this lawsuit is a Debtor in the bankruptcy proceeding and the present case is not a "core" bankruptcy proceeding, as discussed in the Bankruptcy Court's Recommendation.

While there are apparently other cases of a similar nature currently pending in the Central District of California which might increase the risk of inconsistent results, the Court finds that Plaintiff's right to select its forum outweighs that risk. In sum, after balancing the factors the Court finds that they weigh in favor of permissive abstention and equitable remand.

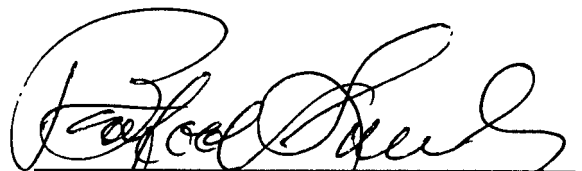
II. Conclusion:

The Bankruptcy Court Report and Recommendation are correct and they are **ADOPTED** as the judgment of this Court. Defendant's Objections are **OVERRULED**. Plaintiff's Request for Judicial Notice is **DENIED**. The motion of TJX Companies, Inc. for further referral to the Bankruptcy Court is **DENIED**. The Court exercises its rights of permissive abstention under 28 U.S.C. § 1334(c)(1). The Court further finds, in the interest of justice, that this case should be equitably **REMANDED** under 28 U.S.C. § 1452(b) to the 68th Judicial District of Texas, Dallas County.

THE CLERK IS DIRECTED TO IMMEDIATELY FAX THIS ORDER TO COUNSEL.

SO ORDERED.

DATED: October 3, 2002.


BAREFOOT SANDERS, SENIOR JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

²The Court acknowledges that the presence of an indemnification agreement between the Defendant and debtor in this case complicate this analysis. However, the very purpose of obtaining a guarantor in this case was to ensure that the debt could be collected in case of default without resort to bankruptcy adjudication. Allowing Defendant to bypass that liability by entering into an indemnification agreement with the very party principally liable does not square with the principles of equity and justice.